

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 460 of 1989

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

HEIRS OF ABDULKARIM BANUMIYA

Versus

SAUMIN BIPINCHANDRA MEHTA

Appearance:

MR N.V. ANJARIA for MR SN SHELAT for Petitioners
MR SB VAKIL for Respondents

CORAM : MR.JUSTICE Y.B.BHATT
Date of decision: 01/12/2000

ORAL JUDGEMENT

1. This is a revision under section 29(2) of the
Bombay Rents, Hotel and Lodging House Rates Control Act,

1947 (the said Act for short) at the instance of the original defendant-tenant, challenging the judgement and decree of eviction passed by the trial court and confirmed by the lower appellate court.

2. The respondents-landlords filed a suit for a decree of eviction against the defendant-tenant on the ground that the defendant-tenant was in arrears of rent for more than six months and had neglected to pay the same in spite of the demand made for the same in the statutory notice.

3. It was the specific case of the plaintiffs-landlords that formerly the defendant-tenant was the owner of the property, that the plaintiffs purchased the said property for valuable consideration from the defendant vendor and that, with effect from the date of sale deed, the vendor of the property became a tenant of the purchaser landlords. The defendant-tenant then paid rent for only about a month and half encompassing the first payment made in this regard and thereafter made no payment whatsoever. The landlords further contended that a statutory notice under section 12(2) was issued by the landlords and received by the tenant, but no reply was given and hence the suit.

4. It is pertinent to note that the defendant-tenant in his written statement confined himself to general and vague denials, denied the transaction of sale and also denied the relationship of landlord and tenant. No specific case was put up by the defendant in his written statement.

5. The trial court framed appropriate issues and after recording the evidence, found in favour of the plaintiffs-landlords. The trial court found that the landlords had purchased the property for valuable consideration, had permitted the vendor to retain possession of the property as a tenant, that rent was fixed at Rs.300/- per month, and that about one and half months rent was paid and no further amount was paid thereafter.

6. The trial court, therefore, found that this was a case covered by section 12(3)(a) of the Bombay Rent Act, and inasmuch as the tenant had neglected to meet the demand made in the statutory notice within 30 days of the receipt thereof, it was a case covered under section 12(3)(a) of the said Act, and therefore, the Court was bound to pass a decree for eviction against the defendant-tenant.

7. The tenant thereupon preferred an appeal before the lower appellate court under section 29(1) of the Bombay Rent Act. On a total reappreciation of the evidence on record the lower appellate court confirmed the findings of fact recorded by the trial court and also confirmed the decree of eviction passed against the defendant under section 12(3)(a) of the said Act. Hence the present revision at the instance of the tenant under section 29(2) of the said Act.

8. Before proceeding with the merits of the matter it would be pertinent to bear in mind the principles laid down by the Supreme Court while dealing with the revisions arising under section 29(2) of the said Act. The Supreme Court in the case of Patel Valmik Himatlal & Others Vs. Patel Mohanlal Muljibhai [1998(2) GLH 736 = AIR 1998 SC 3325], while approving and reiterating the principles laid down in its earlier decision in the case of Helper Girdharbhai Vs. Saiyad Mohmad Mirasaheb Kadri [AIR 1987 SC 1782], held that High Court cannot function as a court of appeal, cannot reappreciate the evidence on record, cannot discard concurrent findings of fact based on evidence recorded by the courts below, and cannot interfere on grounds of inadequacy or insufficiency of evidence, and cannot interfere, except in cases where conclusions drawn by the courts below are on the basis of no evidence at all, or are perverse. A different interpretation on facts is also not possible merely because another view on the same set of facts may just be possible.

9. Only a few salient features require to be noted. The crux of the matter is as to whether the plaintiffs had purchased the property from the defendant and had permitted the defendant to retain possession of the property by creating a tenancy in favour of the vendor. It may be borne in mind that although the defendant has made only vague and generalised denials in his written statement, his only attempt to discredit the evidence led by the plaintiffs-landlords is by leading oral evidence, which as discussed hereinafter, is not permissible in view of sections 91 and 92 of the Evidence Act.

10. The plaintiffs-landlords have proved the purchase of the property by the registered sale deed at Exh.37. The sale deed is signed on 29th January 1972 and registered on 16th February 1972. It is pertinent to note that this document also bears the signature of the defendant's advocate viz. Munikumar Patel. It is also pertinent to note that the document makes specific

recital not only of the passing of the consideration, but also mentions the number of cheques by which payment of consideration was made by the purchaser landlords to the vendor defendant. This aspect would be relevant at a later stage of discussion.

11. In the context of this sale deed it is also relevant to note the defence of the defendant-tenant. The defendant has admitted his signature on the document, but has denied the transaction reflected in the document. He has, therefore, tried to deny the passing of consideration or the receipt of the money mentioned in the document. However, both the trial court and the lower appellate court, in my opinion, have rightly come to the conclusion that the landlords have established by leading appropriate evidence on record, even of the fact that the defendant had insisted upon the issuance of bearer cheques and it was for this reason that the purchaser landlords had issued bearer cheques which had been encashed by the vendor tenant under his own signature, and by himself in person, by presenting the same for payment at the bank. The plaintiffs-landlords have established by evidence on record that it was the defendant who had gone to the bank, presented the bearer cheques for encashment, and that it was the defendant's signature on the reverse of the cheques, obtained by the bank as acknowledgment of having received the amount in cash from the bank.

12. It is also pertinent to bear in mind at this stage the effect of sections 91 and 92 of the Evidence Act, which bars a party from leading oral evidence contrary to the contents of the document, when the document is either required by law to be a document in writing, or where such document reflects a transaction of immoveable property between the parties. Thus, any attempt on the part of the defendant to lead oral evidence to the effect that there was no sale made by him in favour of the plaintiffs-landlords (contrary to the sale deed Exh.37), or that he has not received any consideration therefor (contrary to his encashment of the bearer cheques) would not be evidence permissible to him.

12.1 Even otherwise there is ample reliable and documentary evidence on record not only in respect of the sale, but also the consequences thereof.

13. The plaintiffs-landlords after effecting the purchase by sale deed at Exh.37 got the property mutated in his name and the appropriate entry in the municipal records is in evidence at Exh.40. It cannot be presumed

that the mutation entry was effected by the Municipality without reference to the former owner, nor has the defendant attempted to make out any such case.

14. The plaintiff-landlord has deposed on oath that the rent was fixed at Rs.300/- per month and the defendant had paid rent only upto 31st March 1972 in the sum of Rs.444.60.

15. An important documentary piece of evidence is at Exh.41, which is an original handwritten letter by Munikumar Patel who was the Advocate of the defendant at the relevant time. This letter is dated 20th September 1972 i.e. about seven months after the registration of the sale deed. This letter is addressed by the said lawyer to the purchaser-landlord, introducing a representative of the vendor-defendant, and asking the purchaser landlord to accept rent from the said person, in the sum of Rs.500/- or any amount which may be due at the relevant point of time. The said letter also mentions that the balance of the rent remaining unpaid will be paid by the defendant as soon as possible.

15.1 It is also pertinent to note that the plaintiffs-landlords had issued the statutory notice at Exh.42, which was received by the defendant-tenant at Exh.43 and that the defendant had not given any reply thereto.

15.2 The lower appellate court as also the trial court have rightly observed that the defendant has attempted to create a case, by diverting attention from the facts proved on record by the landlords, by denying the letter of his own advocate at Exh.41, and to deny the role played by his own advocate in bringing about the transaction, merely because his Advocate Shri Munikumar Patel expired during the course of the trial.

16. As already aforesaid, there is concrete and undeniable evidence of the transaction of the sale reflected by the sale deed Exh.37, and the encashment of the cheques by way of consideration by the defendant at Exhs.38 and 39.

17. An attempt is made to show that the landlords have not proved the fact of tenancy. Admittedly no document in writing is produced or proved by the landlords, inasmuch as the tenancy was created only on an oral understanding brought about by the defendant's advocate Shri Munikumar Patel, at about the time when the sale of the property was being negotiated. In this

context the plaintiffs-landlords have deposed on oath that it was understood and admitted by the vendor-defendant that once the sale was made and completed, he would remain in the property as a tenant of the purchaser-plaintiff, and this understanding was in fact implemented. It was only in continuation of and in furtherance of the creation of this tenancy that the plaintiffs-landlords had accepted one and half months rent on the basis of the letter Exh.41 written by the defendant's advocate Shri Munikumar Patel, addressed to the plaintiffs-landlords.

18. The theory sought to be propounded by the defendant that the property was merely mortgaged with the plaintiffs, and the ownership is retained with the defendant is obviously an after-thought and the theory requires to be rejected outright. Such a proposition is also not acceptable in view of the proved fact of sale under the sale deed Exh.37, read with the provisions of sections 91 and 92 of the Evidence Act.

19. In the premises aforesaid, I find that there is absolutely no justification whatsoever for taking any different view than what has been expressed by the trial court and confirmed by the lower appellate court.

20. There is, therefore, no substance in the present revision and the same is accordingly dismissed. Rule is discharged with costs. Interim relief stands vacated.
